

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA                    )  
  )  
                  v.                                ) Cr. No. 03-10368-RCL  
  )  
DEREK FRAZIER                                 )

**MOTION TO CONTINUE SENTENCING**

Now Comes defendant, Derek Frazier, who hereby moves this Court to continue the date for his sentencing, which was tentatively scheduled for December 6th, to one of the following dates if its convenient for the Court and the government: December 13, 14 or 16, 2004. As grounds for this request, defendant states:

1. Counsel for Mr. Colon is presently on trial before the Honorable Judge Hinkle in Suffolk Superior Court. This trial, which involves first degree murder charges, began November 15, 2004 and is expected to continue through the first week of December if not longer.

2. The name of the case is Commonwealth v. Nelson, Suffolk Superior Court No. 02-10866. This case is proceeding on a full day schedule.

3. Consequently, counsel will not be available until mid December for Mr. Frazier's sentencing.

4. This Court originally stated that Mr. Frazier's sentencing would not occur until the Supreme Court ruled on the

Fan Fan case. Defendant does not oppose this Court sentencing him earlier if the Court's position is that the guidelines are unconstitutional and that the Court is willing to proceed without applying the guidelines. Otherwise, defendant would suggest that the Court continue the sentencing date until after the Supreme Court reaches a decision in the Fan Fan case as originally agreed to during the Rule 11 hearing. Defense counsel is available on January 10 through January 12, 2005 if that is convenient for the parties.

Respectfully submitted,

BY DEREK FRAZIER'S ATTORNEY,

/S/ JAMES BUDREAU  
JAMES BUDREAU, BAR#553391  
20 Park Plaza, Suite 905  
Boston, MA 02116  
(617) 227-3700

I hereby certify that a true and correct copy of the foregoing document was served by pacer on November 22, 2004 to Assistant U.S. Attorney Seth Berman.

/S/ JAMES BUDREAU  
James Budreau

AFFIDAVIT OF JAMES BUDREAU

I, James Budreau, do state that the following is true and accurate to the best of my knowledge:

1. I represent Derek Frazier in the instant case.
2. I am presently on trial in Suffolk Superior Court before Judge Hinkle. We are trying a first degree murder case entitled Commonwealth v. Nelson, Suff. No. 02-10866.
3. We are trying the case on a full day basis although there are some breaks from that schedule. The case started on November 15<sup>th</sup> and is expected to last into the second week of December.

Signed under pains and penalties of perjury,

/S/ JAMES BUDREAU  
JAMES BUDREAU